Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1659

THE CHASE MANHATTAN BANK, N.A. and CITIBANK, N.A.,

Petitioners,

v.

THE FINANCE ADMINISTRATION OF THE CITY OF NEW YORK AND THE FINANCE ADMINISTRATOR OF THE CITY OF NEW YORK,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

PETITIONERS' REPLY MEMORANDUM

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Argument

In their brief in opposition, respondents urge this Court to deny the petition for certiorari because the statute involved is no longer in effect. Respondents have misconstrued this Court's standards for granting writs of certiorari and have also understated the potential impact of this case.

Where the question is of sufficient importance, this Court will grant a writ of certiorari even though the statute involved has been repealed. In *Alaska* v. *American Can Co.*, 358 U.S. 224 (1959), this Court was asked to consider whether Alaska could collect a real and personal property tax for the years 1949 through 1952. Despite the repeal of

the tax statute in 1953, this Court granted certiorari. Similarly, in *Bigelow* v. *Virginia*, 421 U.S. 809 (1975), this Court granted certiorari to decide the First Amendment issue presented, even though the statute in controversy had been effectively repealed by amendment.

Respondents cite *Rice* v. *Sioux City Cemetery*, 349 U.S. 70 (1955), for the proposition that this Court will not grant a petition for certiorari when the ultimate question cannot recur because of a superseding statute. *Rice*, however, is distinguishable because it involved constitutional issues which the Court desired to avoid, given the particular record. Justice Frankfurter spoke of "the evident difficulties of the case" and the Court's "duty to avoid decision of constitutional issues unless avoidance becomes evasion" as reasons for dismissing the writ of certiorari. 349 U.S. at 74, 77. Clearly, the instant case involves no such consideration.

This case does involve, however, the application by the court below of state law standards in construing a federal statute in clear contravention of the repeated directions of this Court and also involves the state court's blatant disregard of the language of the federal statute requiring affirmative action of the state legislature imposing the Commercial Rent Tax.

This case is of importance not only to the present litigants, but also to the other national banks whose liability for the Commercial Rent Tax is still open. Although the sums do not equal those involved here, petitioners are aware of disputes involving The First National Bank of Boston and New England Merchants National Bank which have both contested alleged liability for the Commercial Rent Tax for periods in 1970-1972 in reliance on the same grounds under Pub. L. No. 91-156 as are involved in this case. Therefore, respondents' assertion that this case has no impact beyond the petitioners is not true.

The case under review is analogous to *Alaska* v. *American Can Co., supra,* because tax liability in substantial sums is at issue. Moreover, the court below has erroneously decided an important question of federal law concerning the extent to which states and their subdivisions may tax national banks. For these reasons, this Court should grant certiorari.

Conclusion

The petition for a writ of certiorari should be granted.

Dated: August 23, 1978

Respectfully submitted,

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